

February 23, 2004

Dear Permit Holder:

This letter contains important information about high seas fishing permits issued under the authority of the High Seas Fishing Compliance Act (HSFCA) (16 U.S.C. 5501 et seq.) and activities authorized by such permits.

Historically, a permit issued under the HSFCA has listed the international living marine resource agreements recognized by the United States and noted that holders of HSFCA permits must act in compliance with the listed agreements, including any international conservation and management measures implemented under the agreements. The only restrictions on such HSFCA permit holders were to abide by such international conservation and management measures and any measures that might apply under a Magnuson-Stevens Fishery Conservation and Management Act fishery management plan. Permits issued *after the date of this letter* will be more restrictive than permits issued prior to the date of this letter.

The need for this change arises from an August 21, 2003, decision by the United States Court of Appeals for the Ninth Circuit, which ruled that the National Marine Fisheries Service (NOAA Fisheries) has the legal obligation to consult, pursuant to section 7 of the Endangered Species Act (ESA), on the issuance of HSFCA permits, and that the HSFCA contains discretion to allow NOAA Fisheries to condition HSFCA permits as may be needed to protect or benefit species listed as "endangered" or "threatened."

This letter discusses what holders of *currently valid* permits can do on the high seas and what holders of permits issued *after the date of this letter* can do on the high seas. This letter also discusses a requirement for holders of HSFCA permits to report mortality and injury to marine mammals in accordance with Section 118(e) of the Marine Mammal Protection Act (MMPA).

For holders of *currently valid* HSFCA permits:

Until further notice, holders of *currently valid* HSFCA permits may continue fishing on the high seas as they have in the past, until the expiration date of their current high seas permit, or until the owner or name of the vessel changes, the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation. Fishing activities under a *currently valid* HSFCA permit are not limited by this letter.

For applicants for new and renewal HSFCA permits issued *after the date of this letter*:

HSFCA permits issued by NOAA Fisheries *after the date of this letter* will continue to require permit holders to act in compliance with international living marine resource agreements recognized by the United States and international conservation and management measures

implemented under the agreements, **but will not authorize permit holders to fish with any gear anywhere on the high seas they choose for any target species they choose.** Only specific high seas fishing activities will be authorized by HSFCA permits in the future. **Activities not specifically authorized are prohibited.**

A. Eligible fishing activities for holders of permits issued *after the date of this letter*:

NOAA Fisheries has conducted an evaluation of all known fishing activities conducted by vessels for which HSFCA permits have been issued in the past to determine the level of compliance with requirements of the ESA and the National Environmental Policy Act (NEPA). As a result of that review, HSFCA permits issued *after the date of this letter* will authorize high seas fishing activities conducted in accordance with the following agreements recognized by the United States:

1. **Atlantic Tunas** - International Convention for the Conservation of Atlantic Tunas (ICCAT), 1969 (TIAS 6767); Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.). Tuna fishing in the Atlantic Ocean regulated pursuant to 50 CFR 635 - Atlantic Highly Migratory Species.
2. **Eastern Tropical Pacific Tuna** - Convention between the United States of America and the Republic of Costa Rica for the Establishment of an Inter-American Tropical Tuna Commission (IATTC), 1949 (TIAS 2044) and the Agreement to Reduce Dolphin Mortality in the Eastern Tropical Pacific Tuna Fishery, La Jolla, CA 1992; Tuna Conventions Act of 1950 (16 U.S.C. 951-961). Tuna fishing in the Pacific Ocean regulated pursuant to 50 CFR 300, Subpart C - Pacific Tuna Fisheries and 50 CFR 216.24 - Taking and related acts incidental to commercial fishing operations.
3. **West Coast HMS Fisheries** - Albacore troll fishing conducted in the north Pacific Ocean, tuna purse seine fishing in the eastern Pacific Ocean, and tuna longline fishing (i.e., deep set fishing) by vessels with permits under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS). This fishing generally occurs in FAO Statistical Areas 67 and 77.
4. **Northwest Atlantic Fisheries** - Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, 1979, Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.). Fishing in the Northwest Atlantic Ocean pursuant to an allocation received by the United States in accordance with procedures of the North Atlantic Fisheries Organization (NAFO); general reference is all of FAO statistical area 21.

Additionally, HSFCA permits issued *after the date of this letter* will authorize fishing on the high seas for which a Federal permit has been issued by NOAA Fisheries pursuant to an approved fishery management plan implemented in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (for example, fishing on the high seas by a Hawaii-based longline vessel with a permit issued pursuant to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region).

B. Ineligible fishing activities for holders of permits issued *after the date of this letter*:

Until further notice, the following high seas fishing activities may not be conducted under HSFCA permits issued *after the date of this letter*:

1. **Antarctic Fishing** - Convention for the Conservation of Antarctic Marine Living Resources, 1982 (TIAS 10240); Antarctic Marine Living Resources Convention Act of 1984, (16 U.S.C. 2431 et seq.). Fishing within the area of the Convention for the Conservation of Antarctic Marine Living Resources outside of Exclusive Economic Zones in the Southern Ocean (FAO statistical areas 48, 58, and 88) regulated pursuant to 50 CFR 300 Subparts A and G (Antarctic Marine Living Resources Convention Act of 1984), and annual management measures published in the Federal Register pursuant to the framework at 50 CFR 300.111 and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

2. **South Pacific Tuna Purse Seine Tuna Fishing** - Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (SPTT), 1987; South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.). Fishing for tuna in the South Pacific Ocean regulated pursuant to 50 CFR 300 Subparts A and D - South Pacific Tuna Fisheries.

3. **West Coast-based Longline Swordfish Fishing** - Fishing with longline gear and targeting swordfish (shallow set fishing) by vessels based in California, Oregon, or Washington.

4. **South Pacific Albacore Fishing** - Albacore troll fishing conducted in the South Pacific Ocean; general reference is FAO statistical areas 77, 71, and 81.

5. **Pelagic Squid Jig Fishing** - Fishing in the Pacific Ocean in the Pacific Pelagic Squid Jig Fishery; general reference is FAO statistical area 77.

6. **Cobb Seamount Fishing** - Fishing in the Pacific Ocean on the Cobb Seamount; general reference is FAO statistical area 67.

7. **Other** - Fishing anywhere on the high seas in any other fishery not regulated or formally controlled by the United States.

NOAA Fisheries is undertaking the necessary actions to bring the high seas fishing activities on the ineligible list into compliance with all ESA, MMPA and NEPA requirements. Therefore, certain high seas fishing activities on the ineligible list will move to the eligible list as our work progresses. Permit holders issued HSFCA permits *after the date of this letter* will be provided updated HSFCA permit attachments, as appropriate, so their HSFCA permits will reflect all approved high seas fishing activities as such activities are added to the list of eligible activities.

With respect to CCAMLR, a notice of intent (NOI) announcing that NOAA Fisheries will prepare, in accordance with NEPA requirements, an Environmental Impact Statement on the Federal management of Antarctic marine living resources pursuant to conservation and management measures adopted by CCAMLR was published in the Federal Register on February 5, 2004 (69 FR 5481). With respect to the SPTT, a NOI announcing that NOAA Fisheries will prepare, in accordance with NEPA requirements, an Environmental Assessment of the potential impacts on the human environment resulting from implementation of regulatory changes necessitated by the recent extension of the SPTT was published in the Federal Register on October 9, 2003 (68 FR 58296).

If you have specific questions regarding permit issuance or renewals, you may contact the NOAA Fisheries Regional Office listed below that issued your HSFCA permit:

National Marine Fisheries Service
Northwest Region Permits Office
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115
(206) 526-4353

For all holders of HSFCA permits:

The Marine Mammal Protection Act (16 U.S.C. 1387 et seq.) governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States. Section 118(e) of the MMPA requires the owner or operator of a commercial fishing vessel to report all incidental mortality and injury of marine mammals that occur in the course of commercial fishing operations. This requirement applies to the owners and operators of all vessels issued a HSFCA permit, except for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery (50 CFR 229.1(b)). Accordingly, enclosed is a form and instructions for you to use to report any mortality or injury to marine mammals that occurs while you are fishing on the high seas. Please ensure that you report all such incidents within 48 hours of the end of your high seas fishing trip.

Sincerely,

William T. Hogarth, Ph.D.
Assistant Administrator
for Fisheries

Enclosure

